on the plaintiff to establish the *actual existence* of one or more of the statutory grounds upon which the attachment is based. And if the court or jury be satisfied that no such ground existed in fact, proof that the plaintiff had probable cause to believe otherwise will not avail to sustain the attachment. The issue on the trial of the attachment is, not whether the plaintiff believed, or had probable cause to believe his allegations to be true, but whether they are true in fact.

For example, if the ground of attachment be that the defendant "is removing" or "is about to remove" his effects out of the State, or from the leased premises, the plaintiff must establish the fact, to the satisfaction of the court or jury, that the defendant *was* removing, or *was* about to remove, etc.; and it will not be sufficient to prove that from the facts, as they appeared to him, he had probable cause to believe that the defendant was removing or was about to remove his effects: Va. Code 1887, sec. 2981; *Claflin v. Steenbock*, 18 Gratt. 842, 853 (per Joynes and Rives, J.J.—Moncure, P., dissenting); *Sublett & Cary v. Wood*, 76 Va. 318; *Burruss v. Trant*, 88 Va. 980. See also, as to burden of proof, *Wright v. Rambo*, 21 Gratt. 158.

(2) *Probable Cause*—The question of probable cause only becomes important in the second stage of the litigation; that is, where the plaintiff has failed to maintain his attachment, and the defendant himself becomes plaintiff in an action against him for malicious prosecution. The mere failure of the attachment does not entitle the attachment defendant to damages; he must allege and prove that the proceeding was malicious and was without probable cause. Here, then, the question of probable cause for the first time becomes important. If it appear that the defendant (plaintiff in the attachment) had probable cause, from the information before him at the time of suing out the writ, to believe that the plaintiff (defendant in the attachment) had laid himself liable to the attachment (*i. e.* was removing, had removed, etc.), then the action for malicious prosecution will fail: *Spengler v. Davy*, 15 Gratt. 381; *Burkhart v. Jennings*, 2 W. Va. 242; *Williams v. Hunter*, 3 Hawks (N. C.), 545—*s. c.* 14 Am. Dec. 597 and extensive note; note to *Antcliff v. June* (Mich.), 21 Am. St. Rep. 546; Drake on Attachments (7th ed.), secs. 726, 732, 732a *et seq.*

So that in the attachment proceeding itself, the question is, *What were the facts as they actually existed?*—and in the action for maliciously suing out the writ, *What were the facts as they appeared to the attaching plaintiff?* W. M. L.

PROCESS AGAINST DOMESTIC INSURANCE COMPANIES.—The symmetry of the statute regulating service of process against or notice to a corporation (Va. Code 1887, sec. 3225) has been marred by a recent amendment, which appears to have been as unnecessary as it is ambiguous. The alteration consists in the insertion, near the end of section 3225, of the language, "except that in case of an insurance company created by the laws of this State, *process* shall be directed to the sheriff or sergeant of the county or corporation wherein the chief office of such company is"—Acts 1893-'4, p. 614.

Whether this means that process shall be so directed in *all* cases against domestic insurance companies, or whether the amendatory provision is only intended to abolish the summoning of such companies by *publication*, is a perplexing question. From the collocation of the inserted language, the latter interpretation is

the more reasonable—and it is certainly the more sensible. If the intention had been to require the process to be so directed in all cases, the amendment would naturally have been inserted in an earlier part of section 3225, as an exception to the provision that service may be made on any agent of the corporation; or else section 3220, which provides that process may be directed to the sheriff or sergeant of *any* county or corporation, would have been amended.

No good reason appears why insurance companies should be exempt from the general provisions on the subject of service of process on corporations; nor why this special favor should be shown them in the case of *process* and withheld in case of *notice*—especially since they may be proceeded against by motion to recover a loss under a policy, in which proceeding the summons is by notice. See *Morotock Ins. Co. v. Pankey*, 2 Va. Law Reg. 128. W. M. L.